

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	
Developing a Unified Inter-carrier)	
Compensation Regime)	CC Docket No. 01-92
)	
T-Mobile Petition for Declaratory Ruling)	
US LEC Petition for Declaratory Ruling)	
)	

COMMENTS OF SBC COMMUNICATIONS INC.

SBC Communications Inc. (“SBC”) submits these Comments pursuant to the Public Notice (DA 02-2436) released in this proceeding on September 30, 2002. SBC agrees with the Commission that the petition filed by T-Mobile and other wireless carriers (collectively, “T-Mobile”) and the petition filed by US LEC raise intercarrier compensation issues under consideration in the Commission’s *Inter-carrier Compensation* proceeding (CC Docket No. 01-92). In addition, however, both petitions raise issues concerning the rights of carriers under current Commission rules.

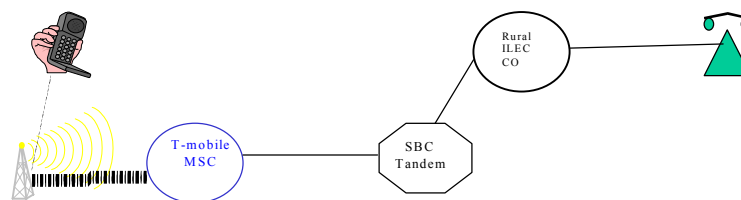
In particular, the T-Mobile petition implicitly raises issues concerning the rights of carriers with respect to indirect interconnection and transit traffic under current Commission rules, and the US LEC petition raises issues concerning the appropriate intercarrier compensation charges billed to IXCs by LECs for traffic that originates or terminates on wireless carriers’ networks. As discussed below, the Commission should affirm that neither the Act nor its rules require third party carriers to provide indirect interconnection or transit services. Accordingly, the Commission also should affirm that, if a carrier does offer to provide transit services, it is not required to price those services at TELRIC. In addition, the Commission should determine that

transit providers bear no intercarrier compensation liability—*i.e.*, liability for termination charges—for traffic originated and terminated by other carriers. Finally, the Commission should affirm that, under existing intercarrier compensation rules, LECs are entitled to recover access charges from IXC's for the provision of access service on interexchange calls originating from or terminating on wireless networks.

The T-Mobile Petition

As SBC understands the practices and arrangements at issue in the T-Mobile petition, wireless carriers frequently send traffic to rural LECs by means of indirect interconnection arrangements, in which RBOCs typically provide transit services to the wireless carriers. In a typical network architecture, the wireless carrier has a direct interconnection arrangement with an RBOC, usually at the RBOC's tandem, and the rural ILEC also has a direct interconnection arrangement with the same RBOC at the same tandem. The wireless carrier negotiates with the RBOC to act as a third party transiting carrier for the delivery of traffic from the wireless carrier's customers to the rural ILEC's customers. The rural ILECs rely upon similar transiting arrangements for the delivery of their traffic to wireless carriers. See Diagram 1.

Diagram 1



The issue raised by T-Mobile concerns the mechanisms the rural ILECs are using to charge intercarrier compensation (*i.e.*, state tariffs rather than interconnection agreements) for terminating traffic originated by the wireless carriers' customers. That particular issue does not generally involve SBC. SBC's only role in the situation described by T-Mobile is that of a transit provider, and its obligations as a transit provider and the rates it charges for transit services are governed by its agreements with the originating wireless carriers.¹ Nevertheless, in presenting the issue, T-Mobile appears to presume that carriers—and, in particular RBOCs—are required to provide transit services.² Such a presumption is incorrect, and SBC requests that the Commission affirm that neither the Act nor its rules require carriers to provide transit services. Moreover, the Commission should affirm that, if a carrier offers to provide transit services, it is not required to price those services at TELRIC and may not be held liable for disputed termination charges.

All carriers are required by 47 U.S.C. § 251(a) “to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers.” There is a difference, however, between a duty “to interconnect indirectly” and a duty “to provide indirect interconnection.” The duty to interconnect indirectly does not require any carrier to provide transit services to any other carrier. Rather it requires any carrier (*e.g.*, a rural ILEC) to terminate traffic provided indirectly from any other carrier (*e.g.*, a wireless carrier) upon request.

Thus, Section 251(a) requires a rural ILEC and a wireless carrier to interconnect for the exchange of traffic between their networks, but permits each of them to determine whether the interconnection will be direct or indirect for traffic they send to each other. If a wireless carrier determines that it prefers to interconnect indirectly with a rural ILEC, the wireless carrier must

¹ See *T-Mobile Petition* at 3 n. 6. This situation involving intraMTA wireless traffic should not be confused with situations involving interMTA wireless traffic, which would require the interexchange wireless carriers to pay access charges to the wireline LECs.

² “Type 2A interconnection also enables a CMRS carrier to obtain indirect interconnection with all other networks that are connected to (or “subtend” the same LATA tandem switch – whether the network is operated by another ILEC, another CMRS carrier, or a competitive LEC (“CLEC”).” *T-Mobile Petition* at 2.

find an intermediary carrier willing to transit its traffic to the rural ILEC. In that case, the rural ILEC is obligated to terminate such traffic provided indirectly from the wireless carrier through the transiting carrier. Conversely, if the rural ILEC determines that it prefers to interconnect indirectly to send its traffic to the wireless carrier, it must find an intermediary carrier willing to transit the rural ILEC's traffic to the wireless carrier. And in that case, the wireless carrier is required to terminate such traffic provided indirectly from the rural carrier through the transiting carrier. The obligation to interconnect indirectly is thus not an obligation to provide transit services. Rather, it is an obligation to terminate traffic from an originating carrier that has been able to negotiate a transit agreement with an intermediary carrier.

A duty to provide indirect interconnection, on the other hand, would require all carriers to act as the intermediary (*i.e.*, provide transit services) when two other carriers desire to interconnect indirectly. The only duty ***to provide interconnection***, however, is set forth in 47 U.S.C. 251(c)(2), and that obligation clearly is limited to interconnection of the requesting carrier "with the [incumbent] local exchange carrier's network." The duty of ILECs to provide interconnection, therefore, is limited to providing interconnection with the ILECs' networks, not with other carriers' networks. Simply put, no provision of the Act imposes a duty upon ILECs to provide or facilitate indirect interconnection or transit services between two other carriers.

Moreover, even if SBC is required under 47 U.S.C. § 251(a) to provide indirect interconnection, it is not required to do so at TELRIC rates. The Commission's TELRIC rate methodology derives from 47 U.S.C. § 252(d)(1), which applies only to interconnection required under 47 U.S.C. § 251(c)(2). There is no interconnection pricing methodology required under 47 U.S.C. § 251(a). In addition, TELRIC pricing for intercarrier compensation as required by the Commission's rules implementing § 252(d)(2) applies only to the transport and termination of § 251(b)(5) traffic. TELRIC thus applies only to the rates charged by a carrier for terminating § 251(b)(5) traffic of an originating carrier. A transit carrier neither originates nor terminates traffic. Therefore, TELRIC does not apply to the services or facilities provided by a transit

carrier.

This interpretation is consistent with the recent decision of the Wireline Competition Bureau (“Bureau”) in the Verizon/AT&T/WorldCom/Cox arbitration for Virginia.³ In that proceeding, Verizon argued that, while every carrier has a right to interconnect indirectly with any other carrier under 47 U.S.C. § 251(a), there is nothing in the Act that permits carriers to transform that right into a duty on the part of ILECs to provide transit services and thus facilitate the duty of other carriers to interconnect indirectly.⁴

The Bureau noted that the Commission has not had occasion “to determine whether incumbent LECs have a duty to provide transit service under [47 U.S.C. § 251(c)(2)].”⁵ Nor did the Bureau find “clear Commission precedent or rules declaring such a duty.”⁶ The Bureau also did not specifically determine whether ILECs have a duty under 47 U.S.C. § 251(a) to provide transit services. Rather, the Bureau concluded that “any duty Verizon may have under section 47 U.S.C. § 251(a) of the Act to provide transit service would not require that service to be priced at TELRIC.”⁷ In short, the Bureau has confirmed that no Commission rule requires carriers to provide indirect interconnection and transit services, and even if carriers are obligated to do so, they are permitted to charge market rates for those services. The Commission should affirm that carriers are not obligated under the Act to facilitate indirect interconnection between other carriers or to provide transit services.

In addition, the Commission should affirm that, if a carrier agrees to provide transit services, it is not responsible for charges assessed by the terminating carrier. When a wireless

³ Memorandum Opinion and Order, *Petitions of WorldCom, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia Inc. and for Expedited Arbitration, et. al.*, CC Docket Nos. 00-218, 00-249, 00-251, DA 02-1731 (July 17, 2002)(“Virginia Arbitration Order”).

⁴ *Id.* ¶ 113.

⁵ *Id.* ¶ 117.

⁶ *Id.*

⁷ *Id.*

customer calls a rural ILEC customer and SBC provides transit services, it may appear to the rural ILEC that it is terminating a call for SBC rather than the wireless carrier, and the rural ILEC may seek termination charges from SBC rather than the wireless carrier. Indeed, that is the one aspect of T-Mobile's petition that involves SBC. In some instances, wireless carriers have refused to pay the rates set forth in rural ILEC tariffs for terminating wireless traffic, and rural ILECs have sought to hold SBC "secondarily liable" for those charges. The Commission should affirm that transit providers bear no liability (secondary or otherwise) for traffic originated by other carriers. Rather, as required by §252(d)(2)(A)(i), terminating carriers must seek intercarrier compensation directly from originating carriers. In the *Virginia Arbitration Order*, the Bureau specifically rejected the argument that RBOCs are required to serve as billing intermediaries between carriers who terminate traffic to one another by using RBOC transit services.⁸ The Commission should affirm the Bureau's decision.

The US LEC Petition

With respect to the US LEC petition, SBC requests that the Commission affirm that, under existing intercarrier compensation rules, LECs are entitled to recover access charges from interexchange carriers ("IXCs") for traffic that originates or terminates on wireless networks. In its *Local Competition Order*, the Commission briefly addressed the appropriate intercarrier compensation for traffic that originates and terminates on LEC and CMRS carrier networks and specifically announced its intent, acting pursuant to Section 251(g), to "preserve the current interstate access charge regime."⁹ In describing the current regime, the Commission noted that, "most traffic between LECs and CMRS providers is not subject to interstate access;" however, the Commission specifically added, "***unless it is carried by an IXC.***"¹⁰ Moreover, the Commission added that, in "situations where a cellular company is offering interstate,

⁸ *Virginia Arbitration Order* ¶ 119.

⁹ *Local Competition Order* ¶ 1043; *see also id.* at ¶ 1033

¹⁰ *Id.*

interexchange service, the local telephone company providing interconnection is providing exchange access to an interexchange carrier and may expect to be paid the appropriate access charge.”¹¹

The Commission was thus clear that it intended to preserve its current regime of assessing originating and termination access charges upon IXC for interexchange calls—including calls that originate or terminate on wireless carriers’ networks. Just as with any other interexchange call, therefore, LECs should be able to charge IXCs access for calls that originate or terminate on wireless carriers’ networks. SBC requests that the Commission affirm that IXCs must pay LECs access charges for such calls.

CONCLUSION

The Commission should address the rights of carriers under the Act and under the Commission’s rules concerning the provision of indirect interconnection and transit services. Specifically, the Commission should determine that carriers are under no obligation to provide indirect interconnection and transit services. Moreover, the Commission should affirm that, if a carrier agrees to provide indirect interconnection and transit services, it is entitled to compensation for the services it provides in both directions between the originating and terminating carriers (*e.g.*, wireless carriers to rural ILECs and rural ILECs to wireless carriers). In addition, the Commission should direct that, if a carrier agrees to provide indirect interconnection and transit services, it is not responsible for intercarrier compensation to either the originating or terminating carrier, and it need not act as a clearinghouse for intercarrier compensation between the originating and terminating carrier. The Commission also should establish that a carrier that agrees to provide indirect interconnection and transit services is not required to price those services at TELRIC. Finally, the Commission should affirm that, under

¹¹ *Id.* at ¶ 1043 n. 2485.

its current rules, IXCs must pay access charges for interexchange traffic that originates or terminates on wireless carriers' networks.

Respectfully submitted,

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October 18, 2002

CERTIFICATE OF SERVICE

I, Loretia Hill, do hereby certify that on this 18th day of October, 2002, Comments of SBC Communications, Inc. in CC Docket No. 01-92, was served first class mail - pre-paid postage to the parties attached.

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